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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/171,049 | 10/12/1998 | EBRAHIM REZAI | JA138 | 7592 |

27752 7590 11/19/2002

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

PRATT, CHRISTOPHER C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771

DATE MAILED: 11/19/2002

22

Please find below and/or attached an Office communication concerning this application or proceeding.

A-5-22

Office Action Summary

Application No.

09/171,049

Applicant(s)

REZAI ET AL.

Examiner

Christopher C Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's remarks filed 9/21/02 have been entered and carefully considered. Applicant's arguments are found to overcome the 112 indefinite rejection set forth in the previous action. Despite this advance, Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-19 and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (5849405) in view of Goldman et al (5669894) and Anjur et al (5645542), as set forth in the previous action.

Applicant has not amended the claims in an attempt to overcome the prior art. Applicant argues that the absorbent polymer of Wang aids in connectivity of the absorbent material to the carrier layer. The examiner agrees that said polymer aids in connectivity, but this fact does not contradict, negate, nor preclude the use of glues and binders further aiding in connectivity. Wang specifically teaches that said polymer may comprise glues and binders (col. 13, lines 25-36). These glues and binders are, therefore, part of said polymer and further enhance the connectivity of said polymer.

Applicant argues that there is no provision in Wang for the inhibition of the shifting of absorbent gelling particles. However, Wang specifically teaches that the

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absorbent material "is attached" to the carrier substrate (col. 16, lines 41-44). This attachment would inhibit shifting.

Applicant argues that col. 30, lines 21-24 of Goldman only teaches adhering the absorbent materials to fibers with the use of glue microfibers, and not to a carrier layer. Applicant concedes that Goldman teaches adhering the absorbent material to a carrier layer a few lines down, but argues that there is no intention by Goldman to combine these two teaches. The examiner does not agree with applicant's assertion, however, the point is moot because this argument is not commensurate in scope with the rejection. Goldman is used as a secondary reference in a 103 combination of references. The primary reference, Wang, teaches attaching absorbent material to a carrier layer with the aid of glues and binders. Goldman teaches a specific form of glues and binders (microfibers) used to adhere absorbent cores. It is the examiner's position that a person having ordinary skill in the art would have found it obvious, based on these teachings, to utilize Goldman's microfibers as the glue or binder of Wang. Applicant has not addressed this obvious combination and, instead, only attacks the references individually. This is impermissible. In re Keller, 208 USPQ 871 (CCPA 1981).

Applicant argues that the fibers of Anjur are not microfibers and are not tacky. Anjur was only cited to teach the use of a specific fiber forming material. The other cited references teach microfibers and melting said microfibers to render them tacky.

Applicant argues that the examiner used impermissible hindsight in constructing the instant rejection. The examiner disagrees with this argument. The primary

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reference, Wang, teaches the use of glues and binders in the absorbent core of a diaper. Wang, however, does not teach any specific glues or binders, what composition they should have, or what structure would be useful. Therefore, the skilled artisan would have to look to the prior art to practice the teachings of Wang. Goldman teaches a specific type of glue successfully used in the absorbent core of a diaper. Therefore, the prior art compliments Wang by filling in the gaps in Wang's disclosure.

Applicant argues that Wang does not teach using glue to attach the absorbent material to a carrier layer. However, as applicant points out, Wang teaches the polymer material to connect materials. The glue is part of the polymer material. Therefore, Wang does teach the glue to attach the absorbent material.

Applicant argues that none of the cited references discloses a motivation to combine. The examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken, as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. The motivation, suggestion nor teaching may come explicitly from the statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See

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Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. See WMS Gaming, Inc. v. International Game Tech., 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999) In this case, Goldman provides motivation by teaching that microfiber glues maintain integrity when wet (col. 30, lines 21-23).

Applicant argues that there is nothing to teach that the use of glue microfibers would be successful. However, Goldman obviously had success using said microfibers in absorbent cores because it specifically advocates their use.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt
November 17, 2002



CHERYL A. JUSKA
PRIMARY EXAMINER